

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

KEVIN HOLLAND,

Petitioner,

v.

CIVIL ACTION NO. 1:16-06000

B.J. JOHNSON, Warden,
FCI McDowell,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. By Standing Order, the matter was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and recommendations ("PF&R") for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). On September 7, 2017, the magistrate judge submitted his PF&R, in which he recommended that the district court dismiss this matter without prejudice for lack of jurisdiction and remove the matter from the court's docket. ECF No. 19.

In accordance with the provisions of 28 U.S.C. § 636(b), petitioner was allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure to file such

objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Petitioner's objections to the PF&R were originally due by September 25, 2017, but the court granted plaintiff's motion for an extension of time allowing the petitioner to submit objections by November 24, 2017. See ECF No. 21.

Petitioner failed to file any objections to Magistrate Judge Tinsley's Findings and Recommendation within the seventeen-day period or by the November 24, 2017 deadline. Having reviewed the Findings and Recommendation, the court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, (ECF No. 19), **DISMISSES** this matter, without prejudice for lack of jurisdiction, (ECF No. 1) and **DIRECTS** the Clerk to remove this case from the court's docket.


Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676,

683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and petitioner, pro se.

It is **SO ORDERED** this 25th day of January, 2018.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge